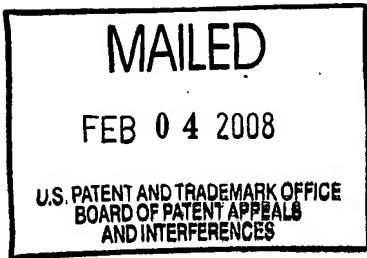


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JOHN R. MOODY

Application 10/004,823

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 23, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Examiner's Answer was mailed March 23, 2007. The first sentence appearing on page 2 under "Grounds of Rejection to be Reviewed on

Appeal" is a duplicate of the sentence appearing on page 3 under the heading "Claims Appendix" and should be removed. It is also noted that the first sentence of the final paragraph on pages 2 of this section is incomplete because it only refers to 37 C.F.R. and does not include a section number.

Correction is required. This discrepancy was previously noted in the

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER mailed

July 5, 2006.¹

In addition, a Reply Brief was filed on January 29, 2007 in response to the Examiner's Answer mailed November 28, 2006.² However, there is no indication in the record regarding whether or not the examiner has considered the Reply Brief. Section 41.43 of the Code of Federal Regulations (2006) states:

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

¹ The discrepancy involving the "Summary of claimed subject matter" was corrected by the submission of a compliant Appeal Brief filed July 12, 2006.

² This Examiner's Answer was remailed on March 23, 2007 in order to correct a discrepancy to heading #3 ("Status of Claims") as noted by the Appeal Center on January 31, 2007.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for submission of a PTOL-90 which corrects the "Grounds of Rejection to be Reviewed on Appeal" section appearing on pages 2 and 3 of the Examiner's Answer mailed March 23, 2007;
- 2) for consideration of the Reply Brief filed January 29, 2007; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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